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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,781	09/27/2000	Paul C. Daly	4538US	6751

24247 7590 03/13/2002

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/13/2002 6

Please find below and/or attached an Office communication concerning this application or proceeding.

TD-6

Office Action Summary

Application No. 09/670781	Applicant(s) DALY
Examiner S. WEINSTEIN	Group Art Unit 1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 4/16/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-16 are rejected under 35 USC 112, second paragraph as being indefinite. The preamble of claim 12 does not appear to be consistent with the body of the claim. Claim 12 recites a "system". The term "system" has the connotation of an apparatus yet the body of the claim recites a method. Therefore, it would appear that the preamble should be changed to read "A method of..".

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazure et al ('207) in view of Blass et al (2/91), Stevens et al (Jan/Feb. 1999), Stevens et al (1997) and Frank (2000), further in view of Beckers ('746), and Hendriks et al ('242).

In regard to claim 1, Lazure et al discloses a package product comprising a cup shaped container defining a cavity opening to a mouth, a volume of a product with the cavity and a cover disposed over the mouth and sealing the product in the cavity. Claim 1 differs from Lazure et al in that claim 1 specifically recites that the product in the cup shaped container is a solution

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comprising sucrose and water. As disclosed, this solution is to be administered to a new born to ease pain during a procedure. However, the article claims just recite the solution in a cup shaped container. Lazure et al discloses that his cup shaped containers can contain unit doses of medicine or individual servings of food. It is not clear how to categorize applicant's product since the sugar solution is edible but also appears to have a medicinal function. In any case, Lazure et al is considered to be a general teaching that it was notoriously old in the packaging art to package both medicinals and food in cup shaped containers to provide unit portions. Since applicant is not the inventor of the sucrose solution as evidenced by applicant's own citation of Blass et al (2/91), Stevens et al (Jan/Feb. 1999), Stevens et al (1997) and Frank (2000), to modify Lazure et al and substitute one conventional product for another conventional product to provide unit portions rather than bulk quantities would have been unequivocally obvious. Beckers can be relied on as further evidence of employing cup shaped containers for providing individual portions of foods and non-foods whereas Hendriks et al is further evidence of the equivalency of cup shaped containers for foods and pharmaceutical products. In regard to claim 2, Lazure discloses that the cover includes a lateral portion that protrudes beyond the rest of the cover as well as the flange. Note that claim 2 only recites that the cover includes a lateral protrusion and does not recite what the portion protrudes beyond. In regard to claims 3-7, Lazure et al discloses the conventionality of the cover being sealed to the peripheral flange, the provision of a peripheral flange, the peripheral flange having a protrusion, etc. In regard to claim 8, Hendricks et al disclose the conventionality of providing pharmaceuticals and foods in a cup-shaped

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container in an aseptic state. Since Lazure et al also discloses foods and medicinals in cup shape containers, to provide the contents of Lazure et al in an aseptic state for its art recognized and applicant's intended function would have been obvious. In regard to claims 9 and 10, claims 9 and 10 recite sucrose solution concentrations which, as disclosed, can function to alleviate pain when administered to newborns. Blass et al, the two Stevens et al references, and Frank can be relied on to teach that applicant's specifically claimed solution is conventional. In regard to claim 11, Beckers can be relied on to teach that the cup-shaped containers can have a width that is greater than the depth. To modify Lazure et al and make a conventional dimensional change is seen to have been an obvious result effective variable.

Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blass et al (2/91), Stevens et al (Jan/Feb/ 1999), Stevens et al (1997) and Frank (2000), further in view of Lazure et al ('207), Beckers ('746) and Hendricks et al ('242).

In regard to claim 12, Blass et al as further evidenced by the two Stevens et al references and Frank teach preparing a solution comprising sucrose and water and administering a selected volume dose of the solution orally to the neonatal infant. Claim 12 differs from Blass et al as further evidenced by the two Stevens et al references and Frank in that the solution is packaged in single use containers and shipped to its intended site of usage. As discussed above, and as disclosed by Lazure et al, it is notoriously old in the packaging art to package unit doses of medicines and food stuffs in individual single-use disposable containers and assembling a plurality of containers for shipping and use. To modify Blass et al as evidenced by the secondary

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art and provide the solution of sucrose and water in such conventional packaging in such a conventional procedure for its art recognized and applicants intended function would therefore have been obvious. Beckers and Hendricks et al are relied on as above as further evidence of single use disposable containers for medicinals and foods. In regard to claim 13, and as noted above, Hendriks et al teaches the ^{conventionality} conventional of aseptic packaging. In regard to claims 15-20, see the comments made above.

The remainder of the references cited on the USPTO 892 form are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can normally be reached on Monday-Friday from to 7:00am to 3:30pm.

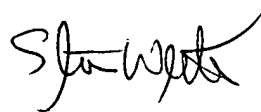
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

SWeinstein:evh

3/6/02

3/7/02



STEVEN WEINSTEIN
PRIMARY EXAMINER
ART UNIT 1761
3/12/02